

## 2003 DRAFTING REQUEST

### Bill

Received: 02/26/2003

Received By: jkuesel

Wanted: As time permits

Identical to LRB:

For: Mark Pocan (608) 266-8570

By/Representing: Glenn Wavrunek

This file may be shown to any legislator: NO

Drafter: jkuesel

May Contact:

Addl. Drafters:

Subject: Elections - campaign finance

Extra Copies:

Submit via email: YES

Requester's email: Rep.Pocan@legis.state.wi.us

Carbon copy (CC:) to:

### Pre Topic:

No specific pre topic given


### Topic:

Political communication attribution requirements

### Instructions:

Per 01 AB-811.

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 04/17/2003	kgilfoy 04/22/2003					Crime
/1		mbarman 04/25/2003	pgreensl 04/25/2003		mbarman 04/25/2003		
		kgilfoy 04/28/2003	pgreensl 04/28/2003		sbasford 04/28/2003	mbarman 05/05/2003	

05/05/2003 01:28:02 PM

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Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

*at intro*

<END>

04/28/2003 12:18:30 PM

Page 1

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Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

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Page 1

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17/1	jkuesel 4/17	1-4/22 dmg	4/23 PG	4/25 PG/RO			
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FE Sent For:

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## 2001 ASSEMBLY BILL 811

February 12, 2002 - Introduced by Representatives POCAN, SHILLING, BLACK, TRAVIS, BOYLE, CARPENTER, LASSA, J. LEHMAN, BERCEAU, BOCK, PLOUFF, MUSSER, MILLER, SHERMAN, KREUSER, LA FAVE, COGGS, SERATTI, MEYERHOFER, TURNER, CULLEN and WASSERMAN, cosponsored by Senators ERPENBACH, BURKE, MOEN, WIRCH and HANSEN. Referred to Committee on Campaigns and Elections.

- Gen. Cat.* *PWF: all amended stats.*
- 1 AN ACT *to repeal* 11.30 (2); *to renumber* 11.01 (1); *to amend* 7.40, 8.30 (2), 11.05  
2 (2g), 11.30 (3) (b), 11.61 (1) (c) and 13.62 (5g); and *to create* 11.01 (1g), 11.01  
3 (17), 11.30 (2m) and 11.59 of the statutes; **relating to:** disclosures required in  
4 certain campaign advertisements.

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*Analysis by the Legislative Reference Bureau*

CURRENT LAW

Current law contains several disclosure requirements with regard to advertisements and similar communications relating to campaigns for state or local office. For example, with certain exceptions, current law requires every printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, or other communication that is paid for through a campaign contribution, disbursement (expenditure), or obligation to make a campaign contribution or disbursement to include a statement disclosing the source of the communication. Generally, current law requires this statement to include the words "Paid for by," followed by the name of the committee, group, or individual who pays for or reimburses the cost of the communication. If the communication is by a personal campaign committee, this statement may identify that committee or any of its bona fide subcommittees. If the communication is a solicitation on behalf of more than one candidate for a lawful joint fund-raising effort, this statement may indicate that a joint fund-raising effort is being conducted on behalf of the named candidates rather than indicate the names of the candidates or personal campaign committees

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*disbursement*  
 assuming responsibility for the communication. The statement need not be included at all if the communication is made by a person that is not primarily organized for political purposes, unless the communication constitutes an independent expenditure (generally, an expenditure made without cooperation or consultation with a candidate or candidate's personal campaign committee and made for the purpose of expressly advocating the election or defeat of a clearly identified candidate). If the communication is made by a person who has filed an oath indicating an intent to make independent expenditures, the communication must also include the words "Not authorized by any candidate or candidate's agent or committee."

Current law contains several exceptions to these disclosure requirements. The requirements do not apply to the preparation and transmittal of personal correspondence; the production, wearing, or display of a single personal item which is not reproduced or manufactured for distribution to more than one individual; or communications printed on small items on which the disclosure information cannot be conveniently printed. In addition, the requirements do not apply to certain election-related, nonadvertising material included in an organization's newsletter, if the newsletter is distributed only to members of the organization.

Current law also prohibits a person from publishing or disseminating a communication that does not comply with these disclosure requirements. However, this prohibition does not apply to a communications medium that relies in good faith on the reasonable representations of a person who places an advertisement with the medium as to the applicability of these requirements to the person.

Currently, a person who violates these disclosure requirements or the prohibition on publication or dissemination is subject to a forfeiture (civil penalty) of up to \$500 per violation. In addition, depending upon the amount or value of the violation, if the violation is intentional, the person is subject to a fine of up to \$10,000 or imprisonment for up to four years and six months, or both, or a fine of up to \$1,000 or imprisonment of up to six months, or both. *Currently, a private person may, under certain conditions, obtain injunctive relief to restrain violations but there is no private right of action for damages against violators.*

**CHANGES TO CURRENT LAW****Generally**

This bill repeals these disclosure requirements and the prohibition on publication or dissemination and creates a new system of disclosure requirements applicable to elections for state or local office. The disclosure requirements under the bill apply to any person who purchases or incurs an obligation for an advertisement. Generally, an "advertisement" under this bill is a communication in a billboard, card, newspaper, newspaper insert, magazine, mailing with more than 500 pieces, pamphlet, flier, or periodical or on television or radio, if the communication constitutes a campaign contribution or disbursement. However, among other things, the bill does not apply to certain communications that do not expressly advocate the election or defeat of a clearly identified candidate or the adoption or rejection of a question at a referendum (commonly referred to as "issue ads"). The bill creates general disclosure requirements and additional disclosure requirements applicable to television or radio advertisements. In addition, the bill prohibits any person from

*this includes what are*

*FWS  
2A*

*of substantially identical material*

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misrepresenting in an advertisement the sponsorship or authorization of the advertisement.

The general disclosure requirements under the bill prohibit a person from purchasing or incurring an obligation for an advertisement unless: a) the advertisement includes the statement "Paid for by .... [name of each purchaser]"; b) if the advertisement supports or opposes the nomination or election of one or more clearly identified candidates, the person states in the advertisement <sup>the person's</sup> position for or against the candidate or candidates; c) if the advertisement supports or opposes a question ~~presented~~ at a referendum, the person states in the advertisement <sup>the person's</sup> position for or against the question; d) if the advertisement is in the print media and supports or opposes the nomination or election of one or more clearly identified candidates, the person states whether or not the advertisement is authorized by a candidate, except that this requirement does not apply if the person purchasing the advertisement is the candidate whom the advertisement supports or that candidate's personal campaign committee; and e) if the advertisement is in the print media and identifies a candidate whom the person is opposing, the person discloses in the advertisement the name of any candidate whom the advertisement is intended to benefit, except that this requirement applies only if the person coordinates or consults with regard to the advertisement, or with regard to the disbursement for the advertisement, with the candidate who is intended to benefit <sup>therefrom</sup>.

The bill establishes certain requirements with regard to the manner in which these general disclosure requirements may be satisfied. In a print media advertisement, the height of all of the disclosure statements must constitute at least 5% of the height of the printed space of the advertisement, except that the type may not be less than 12 points in size. If a single advertisement consists of multiple pages, folds, or faccs, the disclosure statements apply only to one page, fold, or face of the advertisement. In a television advertisement, a written disclosure statement must be made with letters equal to or greater than 4% of the vertical picture height. In a radio advertisement, the disclosure statements must last at least a total of three seconds.

***Additional disclosure requirements applicable to television and radio***

The bill <sup>also</sup> requires a person who purchases or incurs an obligation for a television or radio advertisement that supports or opposes the nomination or election of one or more clearly identified candidates to make certain additional disclosures. If the advertisement is obtained by a candidate or a candidate's personal campaign committee and mentions the name of, shows the picture of, transmits the voice of, or otherwise refers to an opposing candidate, the advertisement must include a statement spoken by the candidate containing at least the following: "I am (or "This is") .... [name of candidate], candidate for .... [name of office], and I (or "my campaign committee") sponsored this advertisement." If the advertisement is obtained by a political party, the advertisement must include a statement spoken by the chairperson, executive director, or treasurer of the political party containing at least the following: "The .... [name of political party] sponsored this advertisement [opposing or supporting] .... [name of candidate] for .... [name of office]." If the advertisement is obtained by a committee other than a political party or legislative

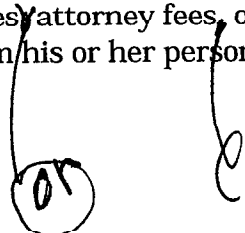
**ASSEMBLY BILL 811**

campaign committee, the advertisement must include a statement spoken by the chief executive officer or treasurer of the committee containing at least the following: "The .... [name of committee], a political action committee, sponsored this advertisement [opposing or supporting] .... [name of candidate] for .... [name of office]." If the advertisement is obtained by an individual, the advertisement must include a statement spoken by the individual containing at least the following: "I am .... [individual's name], and I sponsored this advertisement [opposing or supporting] .... [name of candidate] for .... [name of office]." If the advertisement is obtained by any other person, the advertisement must include a statement spoken by the chief executive or principal decision maker of the person containing at least the following: "....[Name of person] sponsored this advertisement .... [opposing or supporting] .... [name of candidate] for .... [name of office]." If an advertisement requiring one of these additional disclosures is obtained by a person other than a candidate or the candidate's personal campaign committee, the person must characterize the advertisement as either supporting or opposing the nomination or election of one or more clearly identified candidates.

The bill establishes certain requirements with regard to the manner in which the additional televised disclosure requirements may be satisfied. A full-screen picture containing the individual making the required statement must be featured throughout the duration of any statement of a candidate, personal campaign committee, political party, individual, or committee other than a political party or legislative campaign committee. The picture may not contain any printed material other than any visual disclosure statement required by law. In addition, the image of the individual must occupy at least 50% of the vertical picture height and nothing may block the view of the individual's face. If the advertisement is more than five minutes long, the statement must be made at the beginning and at the end of the advertisement.

***Remedies and penalties***

~~This~~<sup>The</sup> bill provides a candidate, or his or her personal campaign committee, with a private right of action against any person who purchases or incurs an obligation for a television or radio advertisement that violates these disclosure requirements, if the advertisement relates to an election for the office that the candidate seeks. The bill establishes filing requirements that a candidate or personal campaign committee must follow in order to bring such an action and requires the action to be brought no later than the 90th day after the election. The bill permits a successful plaintiff to receive damages equal to the total dollar amount of the television and radio advertising time that was aired in violation of these disclosure requirements, except that the damages must be increased to three times that amount in certain circumstances. Under the bill, a candidate and his or her personal campaign committee are jointly and individually liable for the payment of damages and any attorney fees awarded in such an action. However, if a candidate is held personally liable for the payment of damages, attorney fees, or both, the candidate may not use or be reimbursed with funds from his or her personal campaign committee in paying the damages or attorney fees.



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✓ This bill also applies the civil and criminal penalties that apply to violations of the current disclosure requirements to violations of the disclosure requirements established under the bill, except that under the bill the criminal penalties do not apply to violations of the additional disclosure requirements for television and radio advertisements.

→ CRIME

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 7.40 of the statutes is amended to read:

2           **7.40 Sample ballots.** Any individual, committee or candidate, at their own  
3 expense, subject to limitations upon contributions and disbursements under ch. 11,  
4 may print a supply of sample ballots, provided they bear on their face the information  
5 required by s. 11.30 (2) and they contain all of the names shown on the official ballot.

6           **SECTION 2.** 8.30 (2) of the statutes is amended to read:

7           8.30 (2) If no registration statement has been filed by or on behalf of a candidate  
8 for state or local office in accordance with s. 11.05 (2g) or (2r) by the applicable  
9 deadline for filing nomination papers by such candidate, or the deadline for filing a  
10 declaration of candidacy for an office for which nomination papers are not filed, the  
11 name of the candidate may not appear on the ballot. This subsection may not be  
12 construed to exempt a candidate from applicable penalties if he or she files a  
13 registration statement later than the time prescribed in ss. 11.01 (1) (1r) and 11.05  
14 (2g).

15           **SECTION 3.** 11.01 (1) of the statutes is renumbered 11.01 (1r).

16           **SECTION 4.** 11.01 (1g) of the statutes is created to read:

17           11.01 (1g) "Advertisement" means a communication in the print media or on  
18 television or radio that constitutes a contribution or disbursement.

19           **SECTION 5.** 11.01 (17) of the statutes is created to read:

✓  
JWS  
5-14

## ASSEMBLY BILL 811

## SECTION 5

1 11.01 (17) "Print media" means billboards, cards, newspapers, newspaper  
2 inserts, magazines, mailings ~~with~~ <sup>of</sup> more than 500 pieces, ~~pamphlets, fliers, or~~ <sup>of substantially identical</sup>  
3 periodicals. <sup>material</sup>

4 SECTION 6. 11.05 (2g) of the statutes is amended to read:

5 11.05 (2g) CANDIDATES AND PERSONAL CAMPAIGN COMMITTEES. Every candidate,  
6 as defined in s. 11.01 (1) <sup>✓</sup> <sup>✓</sup> (1r), shall file a registration statement with the appropriate  
7 filing officer giving the information required by sub. (3). If a candidate appoints  
8 another person as campaign treasurer the candidate's registration statement shall  
9 be cosigned by the candidate and the candidate's appointed treasurer. A candidate  
10 who receives no contributions and makes no disbursements shall file such statement  
11 as provided in s. 11.10 (1) but need not appoint a campaign treasurer or designate  
12 a campaign depository account until the first contribution is received or  
13 disbursement made.

14 SECTION 7. 11.30 (2) of the statutes is repealed.

15 SECTION 8. 11.30 (2m) of the statutes is created to read:

16 11.30 (2m) (a) Except as provided in par. (f) <sup>✓</sup>, no person may purchase or incur  
17 an obligation for an advertisement unless all of the following conditions are satisfied:

18 1. The advertisement includes the statement "Paid for by .... [name of each  
19 purchaser, as indicated on the purchaser's registration statement under s. 11.05]."

20 2. If the advertisement supports or opposes the nomination or election of one  
21 or more clearly identified candidates, the person states in the advertisement <sup>the person's</sup>  
22 position for or against the candidate or candidates.

23 3. If the advertisement supports or opposes a question proposed at a  
24 referendum, the person states in the advertisement <sup>the person's</sup>  
25 position for or against the question.

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1           4. If the advertisement is in the print media and supports or opposes the  
2 nomination or election of one or more clearly identified candidates, the person states  
3 whether or not the advertisement is authorized by a candidate. The statement in the  
4 advertisement shall <sup>include the words</sup> ~~indicate as follows~~: "Authorized by .... [name of candidate],  
5 candidate for .... [name or office]" or "Not authorized by a candidate," as applicable.

6 This subdivision does not apply if the person purchasing the advertisement is the  
7 candidate whom the advertisement supports or that candidate's personal campaign  
8 committee.

9           5. If the advertisement is in the print media and identifies a candidate whom  
10 the person is opposing, the person discloses in the advertisement the name of any  
11 candidate whom the advertisement is intended to benefit. This subdivision applies  
12 only if the person coordinates or consults with regard to the advertisement, or with  
13 regard to the disbursement for the advertisement, with the candidate who is  
14 intended to benefit <sup>therefrom</sup>

15           (b) 1. In a print media advertisement, the height of all disclosure statements  
16 required under par. (a) shall constitute at least 5% of the height of the printed space  
17 of the advertisement, except that the type may not be less than 12 points in size. If  
18 a single advertisement consists of multiple pages, folds, or faces, the disclosure  
19 statements required under par. (a) apply only to one page, fold, or face of the  
20 advertisement.

21           2. In a television advertisement, a written disclosure statement used to comply  
22 with par. (a) shall be made with letters equal to or greater than 4% of the vertical  
23 picture height.

24           3. In a radio advertisement, all disclosure statements, combined, that are  
25 required under par. (a) shall last at least 3 seconds.

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1 (c) No person may misrepresent in an advertisement the sponsorship or  
2 authorization of the advertisement.

3 (d) In addition to the disclosure statements required under par. (a) and except  
4 as provided in par. (f), a person purchasing or incurring an obligation for an  
5 advertisement on television or radio that supports or opposes the nomination or  
6 election of one or more clearly identified candidates shall satisfy all of the following:

7 1. If the advertisement is purchased by a candidate or a candidate's personal  
8 campaign committee, the advertisement shall include a statement spoken by the  
9 candidate containing at least the following: "I am (or "This is") .... [name of  
10 candidate], candidate for .... [name of office], and I (or "my campaign committee")  
11 sponsored this advertisement." This subdivision applies only to an advertisement  
12 that mentions the name of, shows the picture of, transmits the voice of, or otherwise  
13 refers to a candidate for the same office as that sought by the purchasing candidate  
14 or by the candidate supported by the purchasing personal campaign committee.

15 2. If the advertisement is purchased by a political party, the advertisement  
16 shall include a statement spoken by the chairperson, executive director, or treasurer  
17 of the political party containing at least the following: "The .... [name of political  
18 party] sponsored this advertisement [opposing or supporting] .... [name of candidate]  
19 for .... [name of office]." The name of the political party disclosed under this  
20 subdivision shall be the same as the name used by the political party on the ballot  
21 at the election.

22 3. If the advertisement is purchased by a committee other than a political party  
23 or legislative campaign committee, the advertisement shall include a statement  
24 spoken by the chief executive officer or treasurer of the committee containing at least  
25 the following: "The .... [name of committee], a political action committee, sponsored

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1 this advertisement [opposing or supporting] .... [name of candidate] for .... [name of  
2 office].” The name of the committee disclosed under this subdivision shall be the  
3 same as the name indicated on the committee’s registration statement under s.  
4 11.05.

5 4. Except as provided under subd. 1., if the advertisement is purchased by an  
6 individual, the advertisement shall include a statement spoken by the individual  
7 containing at least the following: “I am .... [individual’s name], and I sponsored this  
8 advertisement [opposing or supporting] .... [name of candidate] for .... [name of  
9 office].”

10 5. If the advertisement is purchased by a person other than a candidate, a  
11 candidate’s personal campaign committee, a political party, a committee other than  
12 a political party or legislative campaign committee, or an individual, the  
13 advertisement shall include a statement spoken by the chief executive or principal  
14 decision maker of the <sup>purchaser</sup> person containing at least the following: “....[Name of person]  
15 sponsored this advertisement .... [opposing or supporting] .... [name of candidate] for  
16 .... [name of office].”

17 6. If the advertisement is televised, a full-screen picture containing an image  
18 of the individual making the statement required under subds. 1. to 5., in  
19 photographic form or through the actual appearance of the individual on camera,  
20 shall be featured throughout the duration of the statement. The picture may not  
21 contain any printed material other than any visual disclosure statement required by  
22 law. The image of the individual shall occupy at least 50% of the vertical picture  
23 height and nothing may block the view of the individual’s face.

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1           7. If the advertisement is televised and is more than 5 minutes long, any  
2 statement required under subds. 1. to 5. shall be made at the beginning and at the  
3 end of the advertisement.

4           8. If a statement is required under subds. 2. to 5., the person shall characterize  
5 the advertisement as either supporting or opposing the nomination or election of one  
6 or more clearly identified candidates.

7           (e) If an advertisement that is subject to par. (d) is jointly purchased or if an  
8 obligation for such an advertisement is jointly incurred, the statement required  
9 under par. (d) shall name all of the purchasers but need be made by only one  
10 individual. If a candidate or a candidate's personal campaign committee is one of the  
11 purchasers or persons who incurs the obligation, that candidate shall be the  
12 individual making the statement. If multiple candidates are the purchasers or  
13 persons who incur the obligation, if a candidate and a personal campaign committee  
14 of another candidate are the purchasers or persons who incur the obligation, or if the  
15 personal campaign committees of multiple candidates are the purchasers or persons  
16 who incur the obligation, at least one of the candidates shall be the individual  
17 making the statement.

18           (f) Paragraphs (a) and (d) do not apply to any of the following:

19           1. An individual who makes disbursements with regard to a particular election  
20 that total less than \$1,000 and that do not constitute a contribution to any candidate  
21 or other individual.

22           2. An individual who purchases or incurs an obligation for an advertisement  
23 with regard to a referendum.

24           3. A person who is exempt from reporting the purchase of or obligation incurred  
25 for an advertisement under s. 11.06 (2).

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1           **SECTION 9.** 11.30 (3) (b) of the statutes is amended to read:

2           11.30 (3) (b) Any person named in par. (a) is guilty of a violation of this chapter  
3 unless, before using the communications medium for political purposes other than  
4 as provided for in sub. ~~(2)~~ <sup>✓</sup> (2<sup>✓</sup>m), there is filed with the board a verified declaration  
5 specifically stating the communications medium in which the person has financial  
6 interest or over which the person has control and the exact nature and extent of the  
7 interest or control.

8           **SECTION 10.** 11.59 of the statutes is created to read:

9           **11.59 Liability for unlawful advertisements.** (1) A candidate who  
10 complies with all applicable requirements under s. 11.30 <sup>✓</sup> (2m) throughout the  
11 candidate's campaign, or the personal campaign committee of such a candidate, may  
12 bring an action for damages against any person who violates s. 11.30 <sup>✓</sup> (2m) with  
13 regard to a television or radio advertisement relating to an election for the office that  
14 the candidate seeks. As a condition of bringing an action under this section, a  
15 candidate for state office, or the personal campaign committee of such a candidate,  
16 shall complete and file with the board a notice of complaint, on a form prescribed by  
17 the board, regarding a violation of s. 11.30 (2m). The notice shall be filed after the  
18 airing of the advertisement, but no later than the Friday after the date of the election.  
19 Any other candidate, or the personal campaign committee of such other candidate,  
20 as a condition of bringing an action under this section, shall file the notice of  
21 complaint during the same time period with the county clerk or, if applicable, the  
22 county board of election commissioners, of any county with territory in the  
23 jurisdiction or district that the candidate seeks to represent and shall publish a short  
24 form notice of complaint, in the form prescribed by the board, in a newspaper having  
25 general circulation in the jurisdiction or district that the candidate seeks to

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1 represent. A candidate or personal campaign committee shall bring an action in  
2 circuit court for the county where the notice of complaint is filed no later than the  
3 90th day following the date of the election.

4 (2) The court shall award a successful plaintiff in an action under this section  
5 damages equal to the total dollar amount of the television and radio advertising time  
6 that was aired in violation of s. 11.30 (2m). The court shall award treble damages  
7 if the plaintiff notified or reasonably attempted to notify the defendant, by 1st class  
8 mail with return receipt requested, that a particular advertisement or that  
9 particular advertisements failed to comply with s. 11.30 (2m) and if, after the notice  
10 or attempted notice, the advertisement continued to be aired. The court shall  
11 calculate the treble damages beginning on the date on which the notice was accepted  
12 or rejected by the defendant. Within 5 days after the return receipt for any notice  
13 mailed under this subsection is provided to the plaintiff, the plaintiff shall send a  
14 copy of the notice to the board or to the county clerk or county board of election  
15 commissioners of the county where the plaintiff's notice of complaint was filed.

16 (3) A candidate and his or her personal campaign committee are jointly and  
17 severally liable for the payment of damages and any attorney fees awarded in an  
18 action under this section. If a candidate is held personally liable for the payment of  
19 damages or attorney fees or both, the candidate may not use or be reimbursed with  
20 funds from his or her campaign depository account in paying the damages or attorney  
21 fees.

22 **SECTION 11.** 11.61 (1) (c) of the statutes is amended to read:

23 11.61 (1) (c) Whoever intentionally violates any provision of this chapter other  
24 than those <sup>specified</sup> ~~provided~~ ~~listed~~ in par. (a) ~~and other than~~ s. 11.30 (2m) (d) and whoever  
25 intentionally violates any provision under par. (b) where the intentional violation

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1 concerns a specific figure which does not exceed \$100 in amount or value may be fined  
2 not more than \$1,000 or imprisoned for not more than 6 months or both.

3 **SECTION 12.** 13.62 (5g) of the statutes is amended to read:

4 13.62 **(5g)** "Candidate" has the meaning given under s. 11.01 ~~(4)~~ (1r). ✓✓

5

~~(END)~~



## SENATE BILL 12

RW 52A

~~of another person, the prohibition against using contributions for most nonpolitical purposes, and the prohibition against filing false reports and statements may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation does not exceed \$100 in amount or value, and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both, if the violation exceeds \$100 in amount or value.~~

~~This bill provides that if any candidate or committee, other than a conduit, accepts a contribution, makes a disbursement, makes any other expenditure for the purpose of making certain mass media communications (see above) or incurs an obligation to make a disbursement to support or oppose a candidate for a major state office (governor, lieutenant governor, attorney general, secretary of state, state treasurer, state superintendent of public instruction, or justice of the supreme court) without first registering and reporting to the extent required under the bill, the offender is subject to a forfeiture (civil penalty) of not more than \$500 for each day of violation. The bill also provides that if any of these candidates or committees accepts one or more contributions, makes one or more disbursements, or incurs one or more obligations to make disbursements for such a purpose in an amount that is more or less than the amount reported by that candidate or committee:~~

- ~~1. By more than 5% but not more than 10%, the candidate or committee must forfeit four times the amount of the difference.~~
- ~~2. By more than 10% but not more than 15%, the candidate or committee must forfeit six times the amount of the difference.~~
- ~~3. By more than 15%, the candidate or committee must forfeit eight times the amount of the difference.~~

~~Act 109 did not include this change.~~

**INITIAL APPLICABILITY**

~~All campaign finance changes under the bill apply to elections held on or after the day on which the bill becomes law.~~

**ELECTIONS BOARD**

~~This bill increases the authorized FTE positions for the board by 1.0 GPR campaign finance investigator position and 1.0 GPR auditor position.~~

~~This change was included in Act 109.~~

**OFFICIAL ACTION IN RETURN FOR PROVIDING  
OR WITHHOLDING THINGS OF VALUE**

~~Currently, no person may offer or give to a state public official, including a member of the legislature, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions, or judgment, or could reasonably be considered a reward for any official action or inaction on the part of the state public official.~~

~~This bill provides, in addition, that no state or local public official holding an elective office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of or upon condition that any other person make or refrain~~

Tw55-14 ✓

SECTION # 8.30(2) of the statutes, as affected by  
2001 Wisconsin Act 109, is repealed and recreated  
to read:

8.30 (2) If no registration statement has been filed by  
or on behalf of a candidate for state or local office in  
accordance with s. 11.05 (2g) ~~with~~ by the applicable  
deadline for filing nomination papers by ~~with~~ the candi-  
date, or the deadline for filing a declaration of candidacy  
for an office for which nomination papers are not filed,  
the name of the candidate may not appear on the ballot.  
This subsection may not be construed to exempt a candi-  
date from applicable penalties if he or she files a registra-

tion statement later than the time prescribed in ss. 11.01  
~~and~~ and 11.05 (2g).

from:  
01 Act 109

(1r)

(1r)

✓  
Section #. 19.42 (3m) of the statutes is amended to read:

as created by 2003 WB canon Act  
109, B  
repealed and  
recreated (1r)

19.42 (3m) "Candidate," except as otherwise provided, has the meaning given in s. 11.01 (1r).

~~NOTE: Sub. (3m) is created eff. 7-1-03 by 2001 Wis. Act 109. However, the treatment by 2002 Wis. Act 109 was held to be unconstitutional and void by the United States District Court for the Western District of Wisconsin in Wisconsin Realtors Assoc. v. Ponto, Case # 02-C-424-C.~~

~~History: 1973 c. 90; Stats. 1973 s. 11.02; 1973 c. 333; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.42; 1977 c. 29, 223, 277; 1977 c. 447 ss. 35, 209; 1979 c. 34, 177, 221; 1981 c. 20, 269, 349, 391; 1983 a. 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 166 ss. 1 to 4, 16; 1983 a. 484, 538; 1985 a. 26; 1985 a. 29 s. 3202 (46); 1985 a. 304; 1987 a. 72, 119; 1987 a. 312 s. 17; 1987 a. 340, 365, 399, 403; 1989 a. 31, 338; 1991 a. 39, 189, 221, 269; 1993 a. 16, 263, 399; 1995 a. 27, 56, 274; 1997 a. 27; 1997 a. 237 ss. 19m, 722q; 1997 a. 298; 1999 a. 42, 65; 2001 a. 16, 104, 109.~~

## ASSEMBLY BILL 119

1 11.12 (4) Each registrant shall report contributions, disbursements, and  
2 incurred obligations in accordance with s. 11.20 and, if the registrant files reports  
3 under s. 11.21 (16), in accordance with s. 11.21 (16). Except as permitted under s.  
4 11.06 (2) and (3m), each report shall contain the information which is required under  
5 s. 11.06 (1).

6 SECTION 1. 2001 Wisconsin Act 109, section 9115 (2y) (b) is amended to read:

7 [2001 Wisconsin Act 109] Section 9115 (2y) (b) Notwithstanding section  
8 990.001 (11) of the statutes, if a court finds that any part of the repeal of sections  
9 11.01 (12s), 11.05 (3) (o), 11.265, 11.50 (3), and 11.50 (10) of the statutes, the  
10 renumbering of sections 11.05 (2r) (title), 11.24 (2), and 11.50 (1) (a) 1. of the statutes,  
11 the renumbering and amendment of sections 11.05 (1), 11.05 (2), 11.05 (2r), 11.12 (6),  
12 11.26 (9) (a), 11.31 (2m), 11.50 (1) (a) 2., 11.50 (5), 11.50 (9), 19.49 (5), 19.59 (7), and  
13 71.10 (3) (a) of the statutes, the amendment of sections 5.02 (13), 5.05 (2), 7.08 (2) (c),  
14 7.08 (2) (cm), ~~8.30 (2)~~, 8.35 (4) (a) 1. a. and b., 8.35 (4) (c) and (d), ~~11.05 (3) (c)~~, 11.05  
15 (5), 11.05 (9) (b), 11.05 (12) (b), 11.05 (13) ~~11.06 (1) (intro.)~~, 11.06 (1) (e), 11.06 (2),  
16 ~~11.06 (3) (b) (intro.)~~, 11.06 (4) (b), 11.06 (5), 11.06 (7m) (a), 11.06 (7m) (b), 11.06 (7m)  
17 (c), 11.07 (1), 11.07 (5), 11.09 (3), 11.10 (1), 11.12 (2), ~~11.12 (4)~~, 11.12 (5), 11.14 (3),  
18 11.16 (2), 11.16 (5), 11.19 (title), 11.19 (1), 11.20 (1), 11.20 (2), 11.20 (3) (a) and (b),  
19 11.20 (7), 11.20 (8) (intro.), 11.20 (8) (a), 11.20 (9), 11.20 (10) (a), 11.20 (12), 11.21 (2),  
20 11.21 (15), 11.21 (16), 11.22 (3), 11.23 (1), 11.23 (2), 11.26 (1) (intro.), 11.26 (2) (intro.),  
21 11.26 (2) (a), 11.26 (3), 11.26 (4), 11.26 (5), 11.26 (6), 11.26 (8), 11.26 (9) (b), 11.26 (10),  
22 11.26 (15), 11.26 (17) (a), 11.31 (1) (intro.), 11.31 (1) (a) to (d), 11.31 (1) (e) and (f), 11.31  
23 (2), 11.31 (2m) (title), 11.31 (3), 11.38 (1) (a) 2., 11.38 (6), 11.38 (8) (b), 11.50 (2) (a),  
24 11.50 (2) (b) 3. and 4., 11.50 (2) (b) 5., 11.50 (2) (c), 11.50 (2) (f), 11.50 (2) (g), 11.50 (2)  
25 (h), 11.50 (2) (i), 11.50 (6), 11.50 (7) (intro.), 11.50 (8), 11.50 (10m), 11.50 (11) (e), 11.60

restore

## ASSEMBLY BILL 119

(4), 11.61 (1) (a) (by SECTION 2d), 19.53 (6), 19.59 (8) (c), 20.510 (1) (q), 25.42, 71.08 (1) (intro.), and 71.10 (3) (b) of the statutes, the repeal and recreation of sections 11.05 (9) (title) and 11.50 (4) of the statutes, the creation of sections 11.001 (2m), 11.01 (4m), 11.01 (12w), (13) and (14), 11.01 (16) (a) 3., 11.05 (1) (b), 11.05 (2) (b), 11.05 (3) (m), 11.05 (3) (r), 11.06 (1) (cm) and (dm), 11.06 (2m) (b) to (d), 11.06 (11) (bm), 11.12 (6) (am), 11.12 (6) (c) and (d), 11.12 (8) and (9), 11.20 (2s), 11.20 (2t), 11.20 (8) (am), 11.24 (1w), 11.24 (4), 11.26 (1m), 11.26 (1t), 11.26 (2) (ae), (am), (as) and (av), 11.26 (2m), 11.26 (2t), 11.26 (8n), 11.26 (8r), 11.26 (9) (a) 1. to 4., 11.26 (9) (am), 11.26 (9m), 11.26 (10a), 11.31 (1) (de), 11.31 (2m) (a), 11.31 (3p), 11.31 (9), 11.385, 11.50 (1) (a) 1. (intro.), 11.50 (1) (a) 2m., 11.50 (1) (am), 11.50 (1) (bm) and (cm), 11.50 (2) (b) 6., 11.50 (2) (j), 11.50 (2m), 11.50 (2s), 11.50 (2w), 11.50 (9) (b), 11.50 (14), 11.60 (3r), ~~19.42 (3m)~~, (4g) and (4r), 19.45 (13), 19.49 (1m), 19.49 (5) (b), 19.535, 19.59 (1) (br), 19.59 (7) (b), 19.59 (8) (cm) and (cn), 71.07 (6s), 71.10 (3) (ac), 71.10 (3) (d), 71.10 (4) (gw), and 806.04 (11m) of the statutes or SECTIONS 9115 (2v), (2x), and (2y), 9132 (4v), 9215 (3v), 9244 (6v), 9315 (2v) and (2w), and 9344 (2v) of this act is unconstitutional, the treatment of those provisions by this act is void.

#### SECTION 8. Nonstatutory provisions.

(1) Notwithstanding section 990.001 (11) of the statutes, if a court finds that the repeal and recreation of section ~~11.06 (1) (intro.) and (3) (b) (intro.) and 11.12 (4)~~ <sup>8.30(2) or 19.42(3m)</sup> of the statutes ~~as affected by this act~~ <sup>by this act</sup> or any part of the laws specified in 2001 Wisconsin Act 109, section 9115 (2y) (b), as affected by this act, is unconstitutional, ~~the repeal and recreation of sections 11.06 (1) (intro.) and (3) (b) (intro.) and 11.12 (4)~~ <sup>sections 8.30(2) and 19.42(3m)</sup> of the statutes by this act is void.

#### SECTION 9. Initial applicability.

## ASSEMBLY BILL 119

## SECTION 9

1 (1) This act first applies with respect to reporting periods which begin on or  
2 after the effective date of this subsection.

3 **SECTION 10. Effective dates.** This act takes effect on the day after publication,  
4 except as follows:

5 (1) The repeal and recreation of sections ~~11.06 (1) (Intro.) and (3) (b) (Intro.) and~~  
6 ~~11.12 (a)~~ of the statutes takes effect on July 1, 2003, or on the day after publication,  
7 whichever is later.

8 (END)

→ treatment of  
section 19.42 (3m)  
of the statutes and the

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

-2153/ldn  
LRB-4193/Tdn  
JTK:jl:jf

December 19, 2001

Representative Pocan:

The North Carolina law upon which this draft was based has numerous drafting errors and inconsistencies. In many cases, we have fixed these errors and inconsistencies in producing this draft. The corrections often required us to exercise judgement as to what you probably intend. Please read this draft carefully to ensure that its requirements satisfy your intent. In particular, please note the following:

1. The North Carolina law requires any televised disclosures to be 32 scan lines in size. Federal law requires televised sponsor disclosures to be at least 4% of the vertical picture height. See 47 CFR 73.1212. Currently, analog television broadcasts use 525 scan lines, while HDTV broadcasts use between 720 and 1,080 scan lines. Although a 32-scan-line image constitutes at least 4% of the vertical picture height of an analog television broadcast, it does not constitute at least 4% of the vertical picture height of an HDTV broadcast. This draft uses the federal standard of 4% rather than the North Carolina standard of 32 scan lines, so that the draft remains consistent with the federal law as HDTV broadcasts become more prevalent. See proposed s. 11.30 (2m) (b) 2. ✓

Also, the televised sponsor disclosure required under federal law must last at least 4 seconds. Do you want to include a similar requirement in this draft?

2. The North Carolina law requires certain radio disclosures to last at least 3 seconds. It was unclear, though, if this requirement means each required statement must last at least 3 seconds or if all required statements combined must last at least 3 seconds. This draft requires all statements combined to last at least 3 seconds. See proposed s. 11.30 (2m) (b) 3. Please let us know if you intend a different result.

3. We clarified that, if a candidate is required to make a disclosure on a television or radio advertisement, then the disclosure required of individuals generally does not apply. See proposed s. 11.30 (2m) (d) 4. and (e) 4. Please let us know if you do not intend to include this clarification.

4. As currently drafted, the name that a political party must use to satisfy the television or radio disclosure requirements must "include" the name of the political party as it will appear on the ballot. See proposed s. 11.30 (2m) (d) 2. and (e) 2. You may want to require, instead, that the name be the same as that which will appear on the ballot.

5. The North Carolina law requires a candidate for local office who brings an action for damages for violation of the television or radio disclosure requirements to file a notice of complaint with the local board of elections. Unlike North Carolina, Wisconsin generally does not have local boards of election. Thus, this draft requires these candidates to file the notice with the county clerk or board of election commissioners and to publish a notice of complaint in a newspaper of general circulation within the candidate's jurisdiction or district. See proposed s. 11.59 (1). Please let us know if these requirements are inconsistent with your intent.

6. Under the North Carolina law, a plaintiff in an action for damages must send a copy of a particular notice to a specified governmental official "within 5 days after the notice is returned to the possession of the plaintiff." It is unclear what this provision means. This bill instead requires the copy to be sent within 5 days after *the return receipt* is provided to the plaintiff. See proposed s. 11.59 (2). Please review this provision and let us know if you desire any changes.

2. 7. ~~The definition of "print media" under this draft includes "billboards" and "outdoor advertising facilities." See proposed s. 11.01 (17). It is unclear what outdoor advertising facilities are, although they may be the same as billboards. We have removed "outdoor advertising facilities" from the definition. Also, the definition of "print media" does not specifically include sample ballots, however, even though sample ballots in some cases are regulated as campaign advertisements under current law. Please let us know if you would like to make any change to the definition of "print media."~~ *me*

8. The North Carolina law provides that, with the exception of misrepresentation, certain information required to be disclosed in television or radio advertisements cannot be used as the basis for a criminal prosecution. This language is likely designed to eliminate the chilling effect that potential criminal penalties may have on campaign-related speech. However, this language is extremely broad and could potentially affect even a prosecution for disorderly conduct. This draft, instead, exempts these disclosure requirements from the criminal penalties provided under s. 11.61 (1) (c), stats. Please let us know if you prefer the North Carolina language instead.

9. North Carolina's s. 163.278.39 creates a Class I misdemeanor for misrepresentation of information disclosed in certain communications. We did not incorporate this provision because: a) it does not require any proof of criminal intent, which is generally required in a criminal statute; and b) there is an existing misdemeanor provided in s. 11.61 (1) (c), stats., that will automatically apply to intentional violations of all provisions of the requirements and prohibitions in this draft, except the radio and television advertisement disclosure requirements, violation of which this draft specifically exempts from the misdemeanor penalty (North Carolina provides that compliance with these requirements cannot be used as a basis for establishing criminal liability). Please let us know if this treatment is not in accord with your intent.

3. 4. 10. Several other provisions of current law are not incorporated into this draft and, thus, would be eliminated if this draft becomes law. Please review s. 11.30 (2) (d), (e), (g), (hm), and (i), stats., and let us know if you would like to preserve any of these

provisions. Also, please note that current law, with certain exceptions, requires disclosure with every communication that is paid for by or through a contribution, disbursement, or incurred obligation. This draft only applies if the communications are made in print media [as defined in proposed s. 11.01 (17)] or on television or radio. In this way, the draft is narrower in scope than the current disclosure law under s. 11.30 (2), stats. Please let <sup>me</sup> know if the scope of this draft is inconsistent with your intent.

4. ~~First~~ This draft also raises <sup>two</sup> ~~three~~ constitutional issues. First, by requiring certain persons to affirmatively state in their advertisements their position for or against a particular candidate or question presented at a referendum, the draft may compel speech in violation of the First Amendment. (See *North Carolina Right to Life v. Leake*, 108 F. Supp. 2d 498 (E.D.N.C. 2000) (enjoining enforcement of a similar provision in North Carolina law). While compelled sponsorship disclosures are likely constitutional, (see *FEC v. Public Citizen, Inc.*, 2001 U.S. App. LEXIS 21692 (11th Cir.) and *Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637, 648 (6th Cir. 1997), cert. denied, 118 S. Ct. 162 (1997), the courts may be less willing to uphold a requirement that a person voice a particular opinion. However, please note that currently there is no court decision on this issue that is binding in Wisconsin. It is possible that, if presented with the issue, a court with jurisdiction over Wisconsin would uphold a requirement of this type.

~~Second, like our current disclosure law, this draft requires disclosures to be made in certain communications relating to referenda. Although the U.S. Supreme Court has not addressed the issue, at least one federal district court has held that disclosure requirements that apply to communications relating to referenda are invalid under the First Amendment. See *Yes for life Political Action Committee v. Webster*, 84 F. Supp. 2d 150 (D. ME 2000).~~

~~Also, Finally, please note that many requirements under this draft are not uniform and, as a result, the requirements may violate the Equal Protection Clause. For example, the content of the televised disclosures required under this draft is not uniform. Compare proposed s. 11.30 (2m) (d) 5. to proposed s. 11.30 (2m) (d) 1. to 4. Also, the full-screen picture requirement under proposed s. 11.30 (2m) (d) 6. does not apply to persons required to disclose information under proposed s. 11.30 (2m) (d) 5. Furthermore, the content of the required radio disclosures is not uniform as compared with the content of the televised disclosure statements. Compare proposed s. 11.30 (2m) (d) 1. to 5. with proposed s. 11.30 (2m) (e) 1. to 5. It is unclear what the rational basis is for these differing treatments. If there is no rational basis, then these differing treatments would be susceptible to challenge under the Equal Protection Clause. You may want to treat these disclosures uniformly, except where it is rational to do otherwise (for example, it would be rational to specify image size in the context of televised disclosure statements but not radio disclosure statements).~~

*let me know*  
Please ~~feel free to contact us~~ if you would like to discuss ~~any~~ *either* of these ~~items~~ *issues*.

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2153/1dn  
JTK:kmg:pg

April 23, 2003

Representative Pocan:

1. The North Carolina law requires any televised disclosures to be 32 scan lines in size. Federal law requires televised sponsor disclosures to be at least 4% of the vertical picture height. See 47 CFR 73.1212. Currently, analog television broadcasts use 525 scan lines, while HDTV broadcasts use between 720 and 1,080 scan lines. Although a 32-scan-line image constitutes at least 4% of the vertical picture height of an analog television broadcast, it does not constitute at least 4% of the vertical picture height of an HDTV broadcast. This draft uses the federal standard of 4% rather than the North Carolina standard of 32 scan lines, so that the draft remains consistent with the federal law as HDTV broadcasts become more prevalent. See proposed s. 11.30 (2m) (b) 2.

Also, the televised sponsor disclosure required under federal law must last at least 4 seconds. Do you want to include a similar requirement in this draft?

2. The definition of "print media" under proposed s. 11.01 (17) does not specifically include sample ballots, even though sample ballots in some cases are regulated as campaign advertisements under current law. See ss. 11.01 (4m) and 11.30 (2) (a), stats. Please let me know if you would like to make any change to the definition of "print media."

3. Several other provisions of current law are not incorporated into this draft and, thus, would be eliminated if this draft becomes law. Please review s. 11.30 (2) (d), (e), (g), (hm), and (i), stats., and let me know if you would like to preserve any of these provisions. Also, please note that current law, with certain exceptions, requires disclosure with every communication that is paid for by or through a contribution, disbursement, or incurred obligation. This draft only applies if the communications are made in print media [as defined in proposed s. 11.01 (17)] or on television or radio. In this way, the draft is narrower in scope than the current disclosure law under s. 11.30 (2), stats. Please let me know if the scope of this draft is inconsistent with your intent.

4. This draft also raises two constitutional issues. First, by requiring certain persons to affirmatively state in their advertisements their position for or against a particular candidate or question presented at a referendum, the draft may compel speech in violation of the First Amendment. See *North Carolina Right to Life v. Leake*, 108 F. Supp. 2d 498 (E.D.N.C. 2000) (enjoining enforcement of a similar provision in North Carolina law). While compelled sponsorship disclosures are likely constitutional, see

*FEC v. Public Citizen, Inc.*, 268 F.3d 1283 (11th Cir., 2001) and *Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637, 648 (6th Cir., 1997), cert. denied, 118 S. Ct. 162 (1997), the courts may be less willing to uphold a requirement that a person voice a particular opinion. However, please note that currently there is no court decision on this issue that is binding in Wisconsin. It is possible that, if presented with the issue, a court with jurisdiction over Wisconsin would uphold a requirement of this type.

Please let me know if you would like to discuss these issues.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**Barman, Mike**

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**From:** Wavrunek, Glenn  
**Sent:** Monday, May 05, 2003 1:22 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-2153/1 Topic: Political communication attribution requirements

It has been requested by <Wavrunek, Glenn> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-2153/1 Topic: Political communication attribution requirements